

STATE OF MICHIGAN
COURT OF APPEALS

KENDALL JANE MACARTHUR,

Plaintiff-Appellant,

v

RAMSEY HAVENWYCK, INC.,

Defendant-Appellee.

UNPUBLISHED

October 25, 2005

No. 262600

Oakland Circuit Court

LC No. 2004-057376-NO

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff was an employee of defendant hospital and was working toward a master's degree in psychology. In order to receive the master's degree, plaintiff had to complete an internship. Plaintiff was given permission to complete an internship with defendant's impulse control unit. After normal working hours at defendant hospital, plaintiff would counsel two young men at the residential unit located across the street from the hospital. The counseling sessions were generally conducted in a private room in order to build a relationship of trust with the client.¹ During a session, plaintiff advised her eleven year old client that her internship would be ending soon. Shortly thereafter, the minor client allegedly assaulted plaintiff. Plaintiff did not complete her internship and did not file a claim for worker's compensation benefits. Nearly three years after the alleged assault, plaintiff filed a complaint alleging negligence. The trial court granted the defense motion for summary disposition, holding that plaintiff was an employee subject to the exclusive remedy provisions of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*

A contract for hire for purposes of the WDCA may be established where there is an exchange of services for training or college credits toward graduation. *Betts v Ann Arbor Public Schools*, 403 Mich 507, 513-515; 271 NW2d 498 (1978). In the present case, plaintiff was

¹ Defendant repeatedly asserted that this was only a general rule, and plaintiff had the option of conducting the sessions in a public setting.

required to complete an internship in order to obtain her master's degree in psychology. Accordingly, the internship qualifies as a contract for hire for purposes of the WDCA. *Betts, supra*.² Moreover, plaintiff failed to present evidence of a specific intent to injure or actual knowledge that an injury was certain to occur. See MCL 418.131(1); *Gray v Morley (After Remand)*, 460 Mich 738, 744-745; 596 NW2d 922 (1999).³ Injury is certain to occur when there is no doubt it will occur, and laws of probability are insufficient to prove certainty. *Bock v General Motors Corp*, 247 Mich App 705, 711; 637 NW2d 825 (2001). Plaintiff failed to meet this high burden.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

² Plaintiff's attempt to distinguish the *Betts* decision based on public or private employment is without merit. Moreover, plaintiff's reliance on *Hoste v Shanty Creek Management, Inc*, 459 Mich 561; 592 NW2d 360 (1999), is also without merit. The *Hoste* Court drew a distinction between a gratuity or accommodation and a payment that satisfies the "of hire" requirement. The *Hoste* Court noted that a "gratuitous worker" was not an employee, but rather an individual who renders assistance albeit for the purpose of furthering his own interest. *Id.* at 578. However, the internship relationship was one of mutual benefit because defendant accepted plaintiff's counseling services for which it normally would have made payment for performance. *Betts, supra* at 515.

³ We note that the complaint did not allege an intentional tort. For reasons of judicial economy, we nonetheless address plaintiff's argument.